

Title 18-A: PROBATE CODE

Article 1: General Provisions, Definitions and Jurisdiction

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Maine Revised Statutes
Title 18-A: PROBATE CODE

Article 1: General Provisions, Definitions and Jurisdiction

Part 1: SHORT TITLE, CONSTRUCTION, GENERAL PROVISIONS

§1-101. SHORT TITLE

This Act shall be known and may be cited as the Probate Code. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-102. PURPOSES; RULE OF CONSTRUCTION

(a). This Code shall be liberally construed and applied to promote its underlying purposes and policies.

[1979, c. 540, §1 (NEW) .]

(b). The underlying purposes and policies of this Code are:

(1). to simplify and clarify the law concerning the affairs of decedents, missing persons, protected persons, minors and incapacitated persons; [1979, c. 540, §1 (NEW).]

(2). to discover and make effective the intent of a decedent in the distribution of his property; [1979, c. 540, §1 (NEW).]

(3). to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors; [1979, c. 540, §1 (NEW).]

(4). to facilitate use and enforcement of certain trusts; [1979, c. 540, §1 (NEW).]

(5). to make uniform the law among the various jurisdictions. [1979, c. 540, §1 (NEW).]

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-103. SUPPLEMENTARY GENERAL PRINCIPLES OF LAW APPLICABLE

Unless displaced by the particular provisions of this Code, the principles of law and equity supplement its provisions. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-104. SEVERABILITY

If any provision of this Code or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of the Code which can be given effect without the invalid provision or application, and to this end the provisions of this Code are declared to be severable. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-105. CONSTRUCTION AGAINST IMPLIED REPEAL

This Code is a general act intended as a unified coverage of its subject matter and no part of it shall be deemed impliedly repealed by subsequent legislation if it can reasonably be avoided. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-106. EFFECT OF FRAUD AND EVASION

Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person, other than a bona fide purchaser, benefitting from the fraud, whether innocent or not. Any proceeding must be commenced within 2 years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than 6 years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-107. EVIDENCE AS TO DEATH OR STATUS

In proceedings under this Code the rules of evidence in courts of general jurisdiction including any relating to simultaneous deaths, are applicable unless specifically displaced by the Code or by rules promulgated under section 1-304. In addition, notwithstanding Title 22, section 2707, the following rules relating to determination of death and status are applicable: [1979, c. 540, §1 (NEW).]

(1). a certified or authenticated copy of a death certificate purporting to be issued by an official or agency of the place where the death purportedly occurred is prima facie proof of the fact, place, date and time of death and the identity of the decedent;

[1979, c. 540, §1 (NEW) .]

(2). a certified or authenticated copy of any record or report of a governmental agency, domestic or foreign, that a person is missing, detained, dead, or alive is prima facie evidence of the status and of the dates, circumstances and places disclosed by the record or report;

[1979, c. 540, §1 (NEW) .]

(3). a person who is absent for a continuous period of 5 years, during which he has not been heard from, and whose absence is not satisfactorily explained after diligent search or inquiry is presumed to be dead. His death is presumed to have occurred at the end of the period unless there is sufficient evidence for determining that death occurred earlier.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-108. ACTS BY HOLDER OF GENERAL POWER

For the purpose of granting consent or approval with regard to the acts or accounts of a personal representative or trustee, including relief from liability or penalty for failure to post bond, to register a trust, or to perform other duties, and for purposes of consenting to modification or termination of a trust or to deviation from its terms, the sole holder or all co-holders of a presently exercisable general power of appointment, including one in the form of a power of amendment or revocation, are deemed to act for beneficiaries to the extent their interests, as objects, takers in default, or otherwise, are subject to the power. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-109. MARRIED WOMEN'S STATUS

The marriage of a woman shall have no effect on her legal capacity, nor on the rights, privileges, authority, duties or obligations of the married woman or of her husband under this Code, except as expressly provided by statute. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-110. TRANSFER FOR VALUE

Any recorded instrument described in this Code on which the register of deeds shall note by an appropriate stamp "Maine Real Estate Transfer Tax Paid" shall be prima facie evidence that such transfer was made for value. [1981, c. 367, §1 (NEW).]

SECTION HISTORY

1981, c. 367, §1 (NEW).

§1-111. POWERS OF FIDUCIARIES RELATING TO COMPLIANCE WITH ENVIRONMENTAL LAWS

(a). From the inception of the trust or estate, a fiduciary has the following powers, without court authorization, which the fiduciary may use in the fiduciary's sole discretion to comply with environmental law:

- (1). To inspect and monitor property held by the fiduciary, including interests in sole proprietorships, partnerships or corporations and any assets owned by any such business enterprise, for the purpose of determining compliance with environmental law affecting the property and to respond to any actual or threatened violation of any environmental law affecting the property held by the fiduciary; [1993, c. 568, §1 (NEW).]
- (2). To take, on behalf of the estate or trust, any action necessary to prevent, abate or otherwise remedy any actual or threatened violation of any environmental law affecting property held by the fiduciary, either before or after the initiation of an enforcement action by any governmental body; [1993, c. 568, §1 (NEW).]
- (3). To refuse to accept property if the fiduciary determines that any property to be donated to the trust or estate either is contaminated by any hazardous substance or is being used or has been used for any activity directly or indirectly involving any hazardous substance that could result in liability to the trust or estate or otherwise impair the value of the assets held in the trust or estate, except nothing in this paragraph applies to property in the trust or estate at its inception; [1993, c. 568, §1 (NEW).]

(4). To settle or compromise at any time any claims against the trust or estate that may be asserted by any governmental body or private party involving the alleged violation of any environmental law affecting property held in trust or in an estate; [1993, c. 568, §1 (NEW).]

(5). To disclaim any power granted by any document, statute or rule of law that, in the sole discretion of the fiduciary, may cause the fiduciary to incur personal liability under any environmental law; or [1993, c. 568, §1 (NEW).]

(6). To decline to serve or to resign as a fiduciary if the fiduciary reasonably believes that there is or may be a conflict of interest between the fiduciary's fiduciary capacity and the fiduciary's individual capacity because of potential claims or liabilities that may be asserted against the fiduciary on behalf of the trust or estate because of the type or condition of assets held in the trust or estate. [1993, c. 568, §1 (NEW).]

[1993, c. 568, §1 (NEW) .]

(b). For purposes of this section, "environmental law" means any federal, state or local law, rule, regulation or ordinance relating to protection of the environment or human health. For purposes of this section, "hazardous substances" has the meaning set forth in Title 38, section 1362, subsection 1.

[1993, c. 568, §1 (NEW) .]

(c). The fiduciary may charge the cost of any inspection, review, abatement, response, cleanup or remedial action authorized in this section against the income or principal of the trust or estate. A fiduciary is not personally liable to any beneficiary or other party for any decrease in value of assets in trust or in an estate by reason of the fiduciary's compliance with any environmental law, specifically including any reporting requirement under the law. Neither the acceptance by the fiduciary of property nor a failure by the fiduciary to inspect property creates an inference as to whether there is or may be any liability under any environmental law with respect to the property.

[1993, c. 568, §1 (NEW) .]

(d). This section applies to all estates and trusts in existence on and created after July 1, 1994.

[1993, c. 568, §1 (NEW) .]

(e). The exercise by a fiduciary of any of the powers granted in this section does not constitute a transaction that is affected by a substantial conflict of interest on the part of the fiduciary.

[1993, c. 568, §1 (NEW) .]

SECTION HISTORY

1993, c. 568, §1 (NEW).

§1-112. GUARDIAN AD LITEM

(a). In any proceeding under this Title for which the court may appoint a guardian ad litem for a child involved in the proceeding, at the time of the appointment, the court shall specify the guardian ad litem's length of appointment, duties and fee arrangements.

[2005, c. 360, §1 (NEW) .]

(b). A guardian ad litem appointed on or after October 1, 2005 must meet the qualifications established by the Supreme Judicial Court.

[2005, c. 360, §1 (NEW) .]

(c). If, in order to perform the guardian ad litem's duties, the guardian ad litem needs information concerning the child or parents, the court may order the parents to sign an authorization form allowing the release of the necessary information. The guardian ad litem must be allowed access to the child by caretakers of the child, whether the caretakers are individuals, authorized agencies or child care providers.

[2005, c. 360, §1 (NEW) .]

(d). The guardian ad litem shall use the standard of the best interest of the child as set forth in Title 19-A, section 1653, subsection 3. The guardian ad litem shall make the wishes of the child known to the court if the child has expressed them, regardless of the recommendation of the guardian ad litem.

[2005, c. 360, §1 (NEW) .]

(e). If required by the court, the guardian ad litem shall make a final written report to the parties and the court reasonably in advance of a hearing. The report is admissible as evidence and subject to cross-examination and rebuttal, whether or not objected to by a party.

[2005, c. 360, §1 (NEW) .]

(f). A person appointed by the court as a guardian ad litem acts as the court's agent and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the guardian ad litem.

[2005, c. 360, §1 (NEW) .]

(g). A guardian ad litem must be given notice of all civil or criminal hearings and proceedings, including, but not limited to, grand juries, in which the child is a party or a witness. The guardian ad litem shall protect the best interests of the child in those hearings and proceedings, unless otherwise ordered by the court.

[2005, c. 360, §1 (NEW) .]

SECTION HISTORY

2005, c. 360, §1 (NEW) .

Part 2: DEFINITIONS

§1-201. GENERAL DEFINITIONS

Subject to additional definitions contained in the subsequent Articles which are applicable to specific Articles or parts, and unless the context otherwise requires, in this Code: [1979, c. 540, §1 (NEW) .]

(1). "Application" means a written request to the registrar for an order of informal probate or appointment under Part 3 of Article III.

[1979, c. 540, §1 (NEW) .]

(2). "Beneficiary", as it relates to trust beneficiaries, includes a person who has any present or future interest, vested or contingent, and also includes the owner of an interest by assignment or other transfer and as it relates to a charitable trust, includes any person entitled to enforce the trust.

[1979, c. 540, §1 (NEW) .]

(3). "Child" includes any individual entitled to take as a child under this Code by intestate succession from the parent whose relationship is involved and excludes any person who is only a stepchild, a foster child, a grandchild or any more remote descendant.

[1979, c. 540, §1 (NEW) .]

(4). "Claims", in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person whether arising in contract, in tort or otherwise, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, or demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.

[1979, c. 540, §1 (NEW) .]

(5). "Court" means any one of the several courts of probate of this State established as provided in Title 4, sections 201 and 202.

[1979, c. 540, §1 (NEW) .]

(6). "Conservator" means a person who is appointed by a Court to manage the estate of a protected person.

[1979, c. 540, §1 (NEW) .]

(7). "Devise", when used as a noun, means a testamentary disposition of real or personal property and when used as a verb, means to dispose of real or personal property by will.

[1979, c. 540, §1 (NEW) .]

(8). "Devisee" means any person designated in a will to receive a devise. In the case of a devise to an existing trust or trustee, or to a trustee on trust described by will, the trust or trustee is the devisee and the beneficiaries are not devisees.

[1979, c. 540, §1 (NEW) .]

(9). "Disability" means cause for a protective order as described by section 5-401.

[1979, c. 540, §1 (NEW) .]

(10). "Distributee" means any person who has received property of a decedent from his personal representative other than as creditor or purchaser. A testamentary trustee is a distributee only to the extent of distributed assets or increment thereto remaining in his hands. A beneficiary of a testamentary trust to whom the trustee has distributed property received from a personal representative is a distributee of the personal representative. For purposes of this provision, "testamentary trustee" includes a trustee to whom assets are transferred by will, to the extent of the devised assets.

[1979, c. 540, §1 (NEW) .]

(10-A). "Domestic partner" means one of 2 unmarried adults who are domiciled together under long-term arrangements that evidence a commitment to remain responsible indefinitely for each other's welfare.

[2003, c. 672, §2 (NEW) .]

(11). "Estate" includes the property of the decedent, trust, or other person whose affairs are subject to this Code as originally constituted and as it exists from time to time during administration.

[1979, c. 540, §1 (NEW) .]

(12). "Exempt property" means that property of a decedent's estate which is described in section 2-402.

[1979, c. 540, §1 (NEW) .]

(13). "Fiduciary" includes personal representative, guardian, conservator and trustee.

[1979, c. 540, §1 (NEW) .]

(14). "Foreign personal representative" means a personal representative of another jurisdiction.

[1979, c. 540, §1 (NEW) .]

(15). "Formal proceedings" means those within the exclusive jurisdiction of the court conducted before a judge with notice to interested persons.

[1979, c. 540, §1 (NEW) .]

(16). "Guardian" means a person who has qualified as a guardian of a minor or incapacitated person pursuant to testamentary or court appointment, but excludes one who is merely a guardian ad litem.

[1979, c. 540, §1 (NEW) .]

(17). "Heirs" means those persons, including the surviving spouse or surviving registered domestic partner, who are entitled under the statutes of intestate succession to the property of a decedent.

[2003, c. 672, §3 (AMD) .]

(18). "Incapacitated person" is as defined in section 5-101.

[1979, c. 540, §1 (NEW) .]

(19). "Informal proceedings" mean those conducted without notice to interested persons by an officer of the Court acting as a registrar for probate of a will or appointment of a personal representative.

[1979, c. 540, §1 (NEW) .]

(20). "Interested person" includes heirs, devisees, children, spouses, domestic partners, creditors, beneficiaries and any others having a property right in or claim against a trust estate or the estate of a decedent, ward or protected person that may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, and other fiduciaries representing interested persons. In any proceeding or hearing under Article 5 affecting a trust estate or estate, when the ward or protected person has received benefits from the Veterans Administration within 3 years, the administrator of Veterans Affairs of the United States is an "interested person." The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

[2003, c. 672, §4 (AMD) .]

(21). "Issue" of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this Code.

[1979, c. 540, §1 (NEW) .]

(21-A). "Judge" means the judge of any one of the several courts of probate as defined in paragraph (5).

[1979, c. 540, §1 (NEW) .]

(22). "Lease" includes an oil, gas, or other mineral lease.

[1979, c. 540, §1 (NEW) .]

(23). "Letters" includes letters testamentary, letters of guardianship, letters of administration, and letters of conservatorship.

[1979, c. 540, §1 (NEW) .]

(24). "Minor" means a person who is under 18 years of age.

[1979, c. 540, §1 (NEW) .]

(25). "Mortgage" means any conveyance, agreement or arrangement in which property is used as security.

[1979, c. 540, §1 (NEW) .]

(26). "Nonresident decedent" means a decedent who was domiciled in another jurisdiction at the time of his death.

[1979, c. 540, §1 (NEW) .]

(26-A). "Oath" means an oath or affirmation.

[1979, c. 663, §§123, 123-A (AMD) .]

(27). "Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, 2 or more persons having a joint or common interest, or any other legal entity.

[1979, c. 540, §1 (NEW) .]

(28). "Parent" includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this Code by intestate succession from the child whose relationship is in question and excludes any person who is only a stepparent, foster parent, or grandparent.

[1979, c. 540, §1 (NEW) .]

(29). "Person" means an individual, a corporation, an organization, or other legal entity.

[1979, c. 540, §1 (NEW) .]

(30). "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

[1979, c. 540, §1 (NEW) .]

(31). "Petition" means a written request to the court for an order after notice.

[1979, c. 540, §1 (NEW) .]

(32). "Proceeding" includes any civil action in any court of competent jurisdiction.

[1979, c. 540, §1 (NEW) .]

(33). "Property" includes both real and personal property or any interest therein and means anything that may be the subject of ownership.

[1979, c. 540, §1 (NEW) .]

(34). "Protected person" is as defined in section 5-101.

[1979, c. 540, §1 (NEW) .]

(35). "Protective proceeding" is as defined in section 5-101.

[1979, c. 540, §1 (NEW) .]

(36). "Register" means the official of the court elected or appointed as provided in section 1-501, or any other person performing the functions of register as provided in section 1-307.

[1979, c. 540, §1 (NEW) .]

(36-A). "Registered domestic partners" means domestic partners who are registered in accordance with Title 22, section 2710.

[2003, c. 672, §5 (NEW) .]

(37). "Security" includes any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate, transferable share, voting trust certificate or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation, any temporary or interim certificate, receipt or certificate of deposit for, or any warrant or right to subscribe to or purchase, any of the foregoing. It shall not include an account as defined in section 6-101, paragraph (1).

[1979, c. 540, §1 (NEW) .]

(38). "Settlement," in reference to a decedent's estate, includes the full process of administration, distribution and closing.

[1979, c. 540, §1 (NEW) .]

(39). "Special administrator" means a personal representative as described by sections 3-614 through 3-618.

[1979, c. 540, §1 (NEW) .]

(40). "State" includes any state or the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

[1979, c. 540, §1 (NEW) .]

(41). "Successor personal representative" means a personal representative, other than a special administrator, who is appointed to succeed a previously appointed personal representative.

[1979, c. 540, §1 (NEW) .]

(42). "Successors" means those persons, other than creditors, who are entitled to property of a decedent under his will or this Code.

[1979, c. 540, §1 (NEW) .]

(43). "Supervised administration" refers to the proceedings described in Article III, Part 5.

[1979, c. 540, §1 (NEW) .]

(44). "Testacy proceeding" means a proceeding to establish a will or determine intestacy.

[1979, c. 540, §1 (NEW) .]

(45). "Trust" includes any express trust, private or charitable, with additions thereto, wherever and however created. It also includes a trust created or determined by judgment or decree under which the trust is to be administered in the manner of an express trust. "Trust" excludes other constructive trusts, and it excludes resulting trusts, conservatorships, personal representatives, trust accounts as defined in Article VI, custodial arrangements pursuant to Title 33, sections 1001 to 1010, or other special custodial arrangements, business trusts provided for certificates to be issued to beneficiaries, common trust funds, voting trusts, security arrangements, liquidation trusts, and trusts for the primary purpose of paying debts, dividends, interest, salaries, wages, profits, pensions, or employee benefits of any kind, and any arrangement under which a person is nominee or escrowee for another.

[1979, c. 540, §1 (NEW) .]

(46). "Trustee" includes an original, additional, or successor trustee, whether or not appointed or confirmed by court.

[1979, c. 540, §1 (NEW) .]

(47). "Ward" is as defined in section 5-101.

[1979, c. 540, §1 (NEW) .]

(48). "Will" includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 663, §§123,123-A (AMD). 1979, c. 690, §3 (AMD). 2003, c. 672, §§2-5 (AMD).

Part 3: SCOPE, JURISDICTION AND COURTS

§1-301. TERRITORIAL APPLICATION

Except as otherwise provided in this Code, this Code applies to (1) the affairs and estates of decedents, missing persons, and persons to be protected, domiciled in this State, (2) the property of nonresidents located in this State or property coming into the control of a fiduciary who is subject to the laws of this State, (3) incapacitated persons and minors in this State, (4) survivorship and related accounts in this State, and (5) trusts subject to administration in this State. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-302. SUBJECT MATTER JURISDICTION

(a). To the full extent provided in sections 3-105, 5-102 and 5-402, the court has jurisdiction over all subject matter relating to (1) estates of decedents, including construction of wills and determination of heirs and successors of decedents and estates of protected persons; (2) protection of minors and incapacitated persons; and (3) trusts.

[2003, c. 618, Pt. B, §4 (AMD); 2003, c. 618, Pt. B, §20 (AFF) .]

(b). The Court has full power to make orders, judgments and decrees and take all other action necessary and proper to administer justice in the matters which come before it.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 618, §B4 (AMD). 2003, c. 618, §B20 (AFF) .

§1-303. VENUE; MULTIPLE PROCEEDINGS; TRANSFER

(a). Where a proceeding under this Code could be maintained in more than one place in this State, the court in which the proceeding is first commenced has the exclusive right to proceed.

[1979, c. 540, §1 (NEW) .]

(b). If proceedings concerning the same estate, protected person, ward, or trust are commenced in more than one court of this State, the court in which the proceeding was first commenced shall continue to hear the matter, and the other courts shall hold the matter in abeyance until the question of venue is decided, and if the ruling court determines that venue is properly in another court, it shall transfer the proceeding to the other court.

[1979, c. 540, §1 (NEW) .]

(c). If a court finds that in the interest of justice a proceeding or a file should be located in another court of this State, the court making the finding may transfer the proceeding or file to the other court.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-304. RULE-MAKING POWER

(a). The Supreme Judicial Court shall have the power to prescribe by general rules the forms, practice and procedure, including rules of evidence, to be followed in all proceedings under this Code and all appeals therefrom; provided that the rules shall be consistent with the provisions of this Code and shall not abridge, enlarge or modify any substantive right.

[1979, c. 540, §1 (NEW) .]

(b). These rules shall be promulgated to take effect on the effective date of this Code. After their promulgation, the Supreme Judicial Court may repeal, amend, modify or add to them from time to time with or without a waiting period. After the effective date of the rules as promulgated or amended, all laws in conflict therewith shall be of no further force or effect, except that in the event of conflict with a provision of this Code, the Code provision shall prevail.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-305. RECORDS AND CERTIFIED COPIES; JUDICIAL SUPERVISION

The register shall maintain records and files and provide copies of documents as provided in sections 1-501 through 1-511 and such further records and copies as the Supreme Judicial Court may by rule provide. The register shall be subject to the supervision and authority of the judge of the court in which such register serves. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-306. NO JURY TRIAL; REMOVAL

(a). The court shall sit without a jury.

[1979, c. 540, §1 (NEW) .]

(b). Upon timely demand by any party any proceeding not within the exclusive jurisdiction of the court may be removed for trial to the Superior Court under such procedures as the Supreme Judicial Court may by rule provide.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-307. REGISTER; POWERS

The register has the power to probate wills and appoint personal representatives as provided in sections 3-302 and 3-307 and to perform other duties as set out in this Title generally. The acts and orders that this Code specifies as performable by the register may also be performed by a judge of the court or by a deputy register appointed under the provisions of section 1-506. [1993, c. 148, §1 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1993, c. 148, §1 (AMD).

§1-308. APPEALS

Appeals from all final judgments, orders and decrees of the court shall lie to the Supreme Judicial Court, sitting as the law court, as in other civil actions. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-309. JUDGES

A judge of the court shall be chosen and serve as provided in Title 4, sections 301 to 311. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-310. OATH OR AFFIRMATION ON FILED DOCUMENTS

Except as otherwise specifically provided in this Code or by rule, every document filed with the Court under this Code including applications, petitions, and demands for notice, shall be deemed to include an oath, affirmation, or statement to the effect that its representations are true as far as the person executing or filing it knows or is informed, and penalties for perjury may follow deliberate falsification therein. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

Part 4: NOTICE, PARTIES AND REPRESENTATION IN ESTATE LITIGATION AND OTHER MATTERS

§1-401. NOTICE

Whenever notice of any proceeding or any hearing is required under this Code, it shall be given to any interested person in such manner as the Supreme Judicial Court shall by rule provide. Each notice shall include notification of any right to contest or appeal and shall be proved by the filing of an affidavit of notice. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-402. NOTICE; WAIVER

A person, including a guardian ad litem, conservator, or other fiduciary, may waive notice in such manner as the Supreme Judicial Court shall by rule provide. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-403. PLEADINGS; WHEN PARTIES BOUND BY OTHERS; NOTICE

In formal proceedings involving trusts or estates of decedents, minors, protected persons, or incapacitated persons, and in judicially supervised settlements, the following apply: [1979, c. 540, §1 (NEW).]

(1). Interests to be affected shall be described in pleadings which give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner.

[1979, c. 540, §1 (NEW) .]

(2). Persons are bound by orders binding others in the following cases:

(i). Orders binding the sole holder or all coholders of a power of revocation or a presently exercisable general power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests, as objects, takers in default, or otherwise, are subject to the power. [1979, c. 540, §1 (NEW) .]

(ii). To the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate he controls; orders binding a guardian bind the ward if no conservator of his estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate. If there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent his minor child. [1979, c. 540, §1 (NEW) .]

(iii). An unborn or unascertained person who is not otherwise represented is bound by an order to the extent his interest is adequately represented by another party having a substantially identical interest in the proceeding. [1979, c. 540, §1 (NEW) .]

[1979, c. 540, §1 (NEW) .]

(3). Notice is required as follows:

(i). Notice as prescribed by section 1-401 shall be given to every interested person or to one who can bind an interested person as described in (2)(i) or (2)(ii) above. Notice may be given both to a person and to another who may bind him. [1979, c. 540, §1 (NEW) .]

(ii). Notice is given to unborn or unascertained persons, who are not represented under (2)(i) or (2)(ii) above, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn or unascertained persons. [1979, c. 540, §1 (NEW) .]

[1979, c. 540, §1 (NEW) .]

(4). At any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of a minor, an incapacitated, unborn, or unascertained person, or a person whose identity or address is unknown, if the court determines that representation of the interest otherwise would be inadequate. If not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests. The court shall set out its reasons for appointing a guardian ad litem as a part of the record or the proceeding.

[1979, c. 540, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW) .

Part 5: REGISTERS OF PROBATE

§1-501. ELECTION; BOND; VACANCIES; SALARIES; COPIES

Registers of probate are elected or appointed as provided in the Constitution of Maine. Their election is effected and determined as is provided respecting county commissioners by Title 30-A, chapter 1, subchapter II, and they enter upon the discharge of their duties on the first day of January following their election; but the term of those appointed to fill vacancies commences immediately. All registers, before acting, shall give

bond to the treasurer of their county with sufficient sureties in the sum of \$2,500, except that this sum must be \$10,000 for Cumberland County. Every register, having executed such bond, shall file it in the office of the clerk of the county commissioners of that register's county, to be presented to them at their next meeting for approval. After the bond has been so approved, the clerk shall record it and certify the fact thereon, and retaining a copy thereof, deliver the original to the register, who shall deliver it to the treasurer of the county within 10 days after its approval, to be filed in the treasurer's office. Vacancies caused by death, resignation, removal from the county, permanent incapacity as defined in Title 30-A, section 1, subsection 2-A or any other reason must be filled as provided in the Constitution of Maine. In the case of a vacancy in the term of a register of probate who was nominated by primary election before the general election, the register of probate appointed by the Governor to fill the vacancy until a successor is chosen at election must be enrolled in the same political party as the register of probate whose term is vacant. In making the appointment, the Governor shall choose from any recommendations submitted to the Governor by the county committee of the political party from which the appointment is to be made. [1995, c. 683, §2 (AMD).]

Registers of probate in the several counties are entitled to receive annual salaries as set forth in Title 30-A, section 2. [1995, c. 245, §2 (AMD).]

The salaries of the registers of probate must be in full compensation for the performance of all duties required of registers of probate. They may make copies of wills, accounts, inventories, petitions and decrees and furnish the same to persons calling for them and may charge a reasonable fee for such service, which is considered a fee for the use of the county. Exemplified copies of the record of the probate of wills and the granting of administrations, guardianships and conservatorships, copies of petitions and orders of notice thereon for personal service, appeal copies and the statutory fees for abstracts and copies of the waiver of wills and other copies required to be recorded in the registry of deeds are considered official fees for the use of the county. [1995, c. 245, §2 (AMD).]

This section may not be construed to change or repeal any provisions of law requiring the furnishing of certain copies without charge. [1995, c. 245, §2 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1987, c. 737, §§C33,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD). 1995, c. 245, §2 (AMD). 1995, c. 683, §2 (AMD).

§1-502. CONDITION OF BOND

The condition of such bond shall be to account, according to law, for all fees received by him or payable to him by virtue of his office and to pay the same to the county treasurer by the 15th day of every month following the month in which they were collected, as provided by law; to keep up, seasonably and in good order, the records of the court; to make and keep correct and convenient alphabets of the records and to faithfully discharge all other duties of the office. If such register forfeits his bond, he is thenceforth disqualified from holding said office, and neglect to complete his records for more than 6 months at any time, sickness or extraordinary casualty excepted, shall be adjudged a forfeiture. [1981, c. 40, §2 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 40, §2 (AMD).

§1-503. DUTIES; RECORDS; BINDING OF PAPERS

Registers of probate have the care and custody of all files, papers and books belonging to the probate office and shall duly record all wills probated formally or informally, letters of authority of a personal representative, guardianship or conservatorship issued, bonds approved, accounts filed or allowed, all informal applications and findings, all petitions, decrees, orders or judgments of the judge, including all petitions, decrees or orders relating to adoptions and changes of names and other matters, as the judge directs. Registers of probate shall keep a docket of all probate cases and, under the appropriate heading of each case,

make entries of each motion, order, decree and proceeding so that at all times the docket shows the exact condition of each case. Any register may act as an auditor of accounts when requested to do so by the judge and the judge's decision is final unless appeal is taken in the same manner as other probate appeals. The records may be attested by the volume and it is deemed to be a sufficient attestation of those records when each volume bears the attest with the written signature of the register or other person authorized by law to attest those records. The registers of probate may bind in volumes of convenient size original inventories and accounts filed in their respective offices and, when bound and indexed, those inventories and accounts are deemed to be recorded in all cases when the law requires a record to be made and no further record is required. [1993, c. 148, §2 (AMD).]

A facsimile of the signature of the register of probate or deputy register of probate imprinted at his direction upon any instrument, certification or copy which is customarily certified by him or recorded in the probate office, shall have the same validity as his signature. [1981, c. 470, §41 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 470, §A41 (AMD). 1993, c. 148, §2 (AMD).

§1-504. CERTIFICATION OF WILLS, APPOINTMENTS OF PERSONAL REPRESENTATIVES AND ELECTIVE SHARE PETITIONS INVOLVING REAL ESTATE

Within 30 days after a will has been proved or allowed, or an appointment of a personal representative has been made upon an assumption of intestate status and where the petition for the appointment indicates that the deceased owned real estate, or a petition for an elective share has been filed where the will or the petition upon which appointment of a personal representative has been granted indicates that the deceased owned real estate, the register shall make out and certify to the register of deeds in the county where any affected real estate is situated (1) a true copy of so much of the will as devises real estate, (2) an abstract of the appointment of the personal representative, or (3) a true copy or abstract of the petition for an elective share, as the case may be. Each certification shall include a description of the real estate, so far as it can be furnished from the probated will or the petition upon which the appointment was made, and the name of the decedent and of the devisees or heirs. In the case of a will, the certification shall also set forth the date of the allowance of the will and designate whether it was probated formally or informally. In the case of the formal probate of a will that was previously informally probated, and of an informally probated will that was subsequently denied probate in formal proceedings, the register of probate shall certify such formal probate or formal denial of probate to the register of deeds to which the prior informally probated will was certified, setting forth the date of the formal probate or denial. The register of deeds receiving such copy or certification shall forthwith file the same, minuting thereon the time of the reception thereof, and record it in the same manner as a deed of real estate. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-505. NOTICE TO BENEFICIARIES; FURNISHING OF COPIES

Registers of probate shall, within 30 days after any will is probated, notify by mail all beneficiaries under that will that devises have been made to them, stating the name of the testator and the name of the personal representative, if one has been appointed at the time this notification is sent. Beneficiaries in a will must, upon application to the register of probate, be furnished with a copy of the probated will upon payment of a fee of \$1 per page. [2003, c. 14, §1 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 2003, c. 14, §1 (AMD).

§1-506. DEPUTY REGISTER OF PROBATE

Any register of probate in this State may appoint a deputy register of probate for the county, subject to the requirements of Title 30-A, section 501. The deputy may perform any of the duties prescribed by law to be performed by the register of probate. His signature as the deputy shall have the same force and effect as the signature of the register. The deputy shall give bond to the county for the faithful discharge of his duties in such sum and in the same manner as the register of probate. The deputy register shall act as register in the event of a vacancy or absence of the register, until the register resumes his duties or another is qualified as register. The deputy register shall receive an annual salary as established by the register and approved by the county commissioners. [1987, c. 737, Pt. C, §§34, 106 (AMD); 1989, c. 6, (AMD); 1989, c. 9, §2 (AMD); 1989, c. 104, Pt. C, §§8,10 (AMD).]

In case of the absence of the register in any county where no deputy has been appointed as above authorized, or a vacancy in the office of register of probate due to death, resignation or any other cause, the judge shall appoint a suitable person to act as register pro tempore until the register resumes his duties or another is qualified as register. He shall be sworn and, if the judge requires it, give bond as in the case of the register. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 394, §1 (AMD). 1987, c. 737, §§C34,C106 (AMD). 1989, c. 6, (AMD). 1989, c. 9, §2 (AMD). 1989, c. 104, §§C8,C10 (AMD).

§1-507. INSPECTION OF REGISTER'S CONDUCT OF OFFICE

Every judge of probate shall constantly inspect the conduct of the register with respect to his records and the duties of his office, and give information in writing of any breach of his bond to the treasurer of his county, who shall bring civil action. The money thus recovered shall be applied toward the expenses of completing the records of such register under the direction of said judge and the surplus, if any, shall inure to the county. If it is not sufficient for that purpose, the treasurer may recover the deficiency from the register in a civil action. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-508. REGISTER INCAPABLE OR NEGLECTS DUTIES

When a register is unable to perform his duties or neglects them, the judge shall certify such inability or neglect to the county treasurer, the time of its commencement and termination, and what person has performed the duties for the time. Such person shall be paid by the treasurer in proportion to the time that he has served and the amount shall be deducted from the register's salary. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-509. RECORDS IN CASE OF VACANCY

When there is a vacancy in the office of register and the records are incomplete, they may be completed and certified by the person appointed to act as register or by the register's successor. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-510. REGISTER OR PROBATE COURT EMPLOYEE; PROHIBITED ACTIVITIES

1. Prohibited activities. A register may not:

A. Be an attorney or counselor in or out of court in an action or matter pending in the court of which the register is register or in an appeal in such action or matter; [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Be administrator, guardian, commissioner of insolvency, appraiser or divider of an estate, in a case within the jurisdiction of the court of which the register is register, except as provided in Title 4, section 307, or be in any manner interested in the fees and emoluments arising from such an estate in that capacity; or [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Commence or conduct, either personally or by agent or clerk, any matter, petition, process or proceeding in the court of which the register is register, in violation of this section. [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Assistance in drafting. Except as otherwise provided in this section, a register may not draft or aid in drafting documents or paper that the register is by law required to record in full or in part. A register may aid in drafting applications in informal proceedings, petitions or sworn statements relating to the closing of decedents' estates that have not been contested prior to closing, applications for change of name and petitions for guardians of minors. A register or an employee of the Probate Court may not charge fees or accept anything of value for assisting in the drafting of documents to be used or filed in the court of which the person is the register or an employee.

[2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Penalties. The following penalties apply to violations of this section.

A. A register who violates subsection 1 commits a Class E crime. Violation of subsection 1 is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A register or employee of the Probate Court who violates subsection 2 is subject to a civil penalty of not more than \$100, to be recovered by a complainant in a civil action for the complainant's benefit or by indictment for the benefit of the county. [2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. J, §1 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 165, (AMD). 1981, c. 470, §A42 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §J1 (RPR).

§1-511. FEES FOR APPROVED BLANKS AND FORMS

For all approved blanks, forms or schedule paper required in probate court proceedings, the register shall charge fees which shall be set by the register and approved by the county commissioners, so as not to incur a loss to the county for such services. Such fees shall be payable by the register to the county treasurer for the use and benefit of the county. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

Part 6: COSTS AND FEES

§1-601. COSTS IN CONTESTED CASES IN PROBATE COURT

In contested cases in the original or appellate court of probate, costs may be allowed to either party, including reasonable witness fees, cost of depositions, hospital records or medical reports and attorney's fees, to be paid to either or both parties, out of the estate in controversy, as justice requires. In those cases where a will is being contested on the grounds of undue influence or mental capacity, attorney's fees and costs shall not be allowed to the party contesting the will if he is unsuccessful. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-602. FILING AND CERTIFICATION FEES

The register of probate must receive the following fees for filing or certifying documents: [1997, c. 18, §1 (AMD).]

(1). For making and certifying to the register of deeds copies of devises of real estate, abstracts of petitions for appointment of a personal representative or for an elective share and any other document for which certification is required, \$15, plus the fee for recording as provided by Title 33, section 751, except as otherwise expressly provided by law. The fee must be paid by the personal representative, petitioner or other person filing the document to be certified when the copy of the devise, abstract, petition for elective share or other document for which certification is required is requested. The register of probate shall deliver the certified document to the register of deeds together with the fee for recording as provided by Title 33, section 751;

[2005, c. 654, §1 (AMD) .]

(2). For receiving and entering each petition or application for all estates, testate and intestate, including foreign estates, and the filing of a notice by a domiciliary foreign personal representative, except for the filing of a successor personal representative, when the value of the estate is:

(i). [1993, c. 148, §4 (RP).]

(i-a). For filing a will for no probate, no charge; [2005, c. 654, §1 (NEW).]

(ii). For filing a will to be probated and without an appointment, \$15; [2005, c. 654, §1 (AMD).]

(iii). \$10,000 and under, \$20; [2005, c. 654, §1 (AMD).]

(iv). \$10,001 to \$20,000, \$40; [2005, c. 654, §1 (AMD).]

(v). \$20,001 to \$30,000, \$60; [2005, c. 654, §1 (AMD).]

(vi). \$30,001 to \$40,000, \$75; [2005, c. 654, §1 (AMD).]

(vii). \$40,001 to \$50,000, \$95; [2005, c. 654, §1 (AMD).]

(viii). \$50,001 to \$75,000, \$125; [2005, c. 654, §1 (AMD).]

(ix). \$75,001 to \$100,000, \$190; [2005, c. 654, §1 (AMD).]

(x). \$100,001 to \$150,000, \$250; [2005, c. 654, §1 (AMD).]

(xi). \$150,001 to \$200,000, \$325; [2005, c. 654, §1 (AMD).]

(xii). \$200,001 to \$250,000, \$375; [2005, c. 654, §1 (AMD).]

(xiii). \$250,001 to \$300,000, \$450; [2005, c. 654, §1 (AMD).]

(xiv). \$300,001 to \$400,000, \$500; [2005, c. 654, §1 (AMD).]

- (xv). \$400,001 to \$500,000, \$575; [2005, c. 654, §1 (AMD).]
- (xvi). \$500,001 to \$750,000, \$625; [2005, c. 654, §1 (AMD).]
- (xvii). \$750,001 to \$1,000,000, \$700; [2005, c. 654, §1 (AMD).]
- (xviii). \$1,000,001 to \$1,500,000, \$750; [2005, c. 654, §1 (AMD).]
- (xix). \$1,500,001 to \$2,000,000, \$875; or [2005, c. 654, §1 (AMD).]
- (xx). More than \$2,000,000, \$950, and continuing in steps of \$100 for every increase in value of \$500,000 or part thereof above \$2,500,000; [2005, c. 654, §1 (AMD).]

[2005, c. 654, §1 (AMD) .]

- (3).** For making copies from the records of the court, \$1 for each page;

[2005, c. 654, §1 (AMD) .]

- (4).** For each certificate, under seal of the court, of the appointment and qualification of a personal representative, guardian, conservator or trustee, \$5, and for each double certificate, \$10;

[2005, c. 654, §1 (AMD) .]

- (5).** For filing a petition for appointment as guardian, \$50;

[2005, c. 654, §1 (AMD) .]

- (6).** For filing application for involuntary hospitalization, \$10;

[2005, c. 654, §1 (AMD) .]

- (7).** For filing a joined petition for guardian and conservator, \$75;

[2005, c. 654, §1 (AMD) .]

- (8).** For filing any other formal proceeding, \$25;

[2005, c. 654, §1 (AMD) .]

- (9).** For filing a petition for appointment of conservator, \$50;

[2005, c. 654, §1 (AMD) .]

- (10).** For all other subsequent informal appointments, \$25; and

[2005, c. 654, §1 (AMD) .]

- (11).** For filing a petition for elective share, \$120.

[2005, c. 654, §1 (NEW) .]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1979, c. 719, §§1-3 (AMD). 1981, c. 279, §10 (AMD). 1981, c. 470, §A43 (AMD). 1983, c. 262, §§1,2 (AMD). 1987, c. 392, §§1-4 (AMD). 1993, c. 148, §§3,4 (AMD). 1997, c. 18, §1 (AMD). 2003, c. 383, §1 (AMD). 2005, c. 654, §1 (AMD).

§1-603. REGISTERS TO ACCOUNT MONTHLY FOR FEES

Registers of probate shall account for each calendar month under oath to the county treasurers for all fees received by them or payable to them by virtue of the office, specifying the items, and shall pay the whole amount for each calendar month to the treasurers of their respective counties not later than the 15th day of the following month. [1981, c. 40, §3 (AMD).]

SECTION HISTORY

1979, c. 540, §1 (NEW). 1981, c. 40, §3 (AMD).

§1-604. EXPENSES OF PARTITION

When a partition of real estate is made by order of a judge of probate, the expenses thereof shall be paid by the parties interested in proportion to their interests; but when such expenses accrue prior to the closing order or statement of the personal representative of the deceased owner of such real estate, having in his hands sufficient assets for the purpose, he may pay such expenses and allow the same in his account. In case of neglect or refusal of any person liable to pay such expenses, the judge may issue a warrant of distress against such delinquent for the amount due from him and costs of process. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-605. COMPENSATION OF REPORTERS

Reporters appointed under Title 4, sections 751 to 756, shall, if a transcript is requested by the court or a party, file the original transcript with the court and receive the same compensation as provided by law for temporary court reporters, and travel at the rate of 10¢ a mile. [1979, c. 540, §1 (NEW).]

Transcript rates shall be in accordance with Title 4, section 651, for transcript furnished for the files of the court and shall be paid by the county in which the court or examination is held, after the reporter's bill has been allowed by the judge of the court in which the services were rendered. In probate matters, the personal representative, conservator or guardian shall, in each case out of the estate in his hands, pay to the register for the county the amount of the reporter's fees, giving such fees the same priority as provided in section 3-815 for other costs and expenses of administration, or as otherwise provided for in the case of insolvent estates, provided that the court can order payment by the county in case the estate assets are not sufficient. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-606. REPORTERS TO FURNISH COPIES

Reporters shall furnish correct typewritten copies of the oral testimony taken at any hearing or examination, to any person calling for the same, upon payment of transcript rates prescribed in Title 4, section 651. [1979, c. 540, §1 (NEW).]

SECTION HISTORY

1979, c. 540, §1 (NEW).

§1-607. SURCHARGE FOR RESTORATION, STORAGE AND PRESERVATION OF RECORDS

(1). In addition to any other fees required by law, a register of probate shall collect a surcharge of \$10 per petition, application or complaint, except for name changes, filed in the Probate Court.

[2005, c. 210, §1 (NEW) .]

(2). The surcharge imposed in subsection (1) must be transferred to the county treasurer, who shall deposit it in a separate, nonlapsing account within 30 days of receipt. Money in the account is not available for use as general revenue of the county. Interest earned on the account must be credited to the account.

[2005, c. 210, §1 (NEW) .]

(3). The money in the account established in subsection (2) must be used for the restoration, storage and preservation of the records filed in the office of the register of probate and in Probate Court. No withdrawals from this account may be made without the express written request or approval of the register of probate.

[2005, c. 210, §1 (NEW) .]

(4). The judge of probate may waive the surcharge in subsection (1) if the judge believes that it will prove a hardship for the individual filing the petition, application or complaint.

[2005, c. 210, §1 (NEW) .]

SECTION HISTORY

2005, c. 210, §1 (NEW) .

§1-608. FEES NOT ESTABLISHED IN STATUTE

Unless otherwise specifically stated in statute or in the Rules of Probate Procedure as published by the Supreme Judicial Court, the Probate Court shall charge the same fee as charged by the District Court or the Superior Court for similar procedures. [2005, c. 654, §2 (NEW) .]

SECTION HISTORY

2005, c. 654, §2 (NEW) .

Part 7: CHANGE OF NAME HEADING: PL 1995, C. 694, PT. C, §5 (NEW)

§1-701. PETITION TO CHANGE NAME

(a). If a person desires to have that person's name changed, the person may petition the judge of probate in the county where the person resides. If the person is a minor, the person's legal custodian may petition in the person's behalf.

[2001, c. 163, §1 (NEW) .]

(b). The judge, after due notice, may change the name of the person. To protect the person's safety, the judge may limit the notice required if the person shows by a preponderance of the evidence that:

(1). The person is a victim of abuse; and [2001, c. 163, §1 (NEW) .]

(2). The person is currently in reasonable fear of the person's safety. [2001, c. 163, §1 (NEW) .]

[2001, c. 163, §1 (NEW) .]

(c). The judge shall make and preserve a record of the name change. If the judge limited the notice required under subsection (b), the judge may seal the records of the name change.

[2001, c. 667, Pt. A, §41 (AMD) .]

(d). The fee for filing the name change petition is \$40.

[2005, c. 654, §3 (AMD) .]

(e). The judge may require the person seeking a name change to undergo one or more of the following background checks: a criminal history record check; a motor vehicle record check; or a credit check. The judge may require the person to pay the cost of each background check required.

[2003, c. 538, §1 (NEW) .]

(f). The judge may not change the name of the person if the judge has reason to believe that the person is seeking the name change for purposes of defrauding another person or entity or for purposes otherwise contrary to the public interest.

[2003, c. 538, §1 (NEW) .]

SECTION HISTORY

1995, c. 694, §C5 (NEW). 1995, c. 694, §E2 (AFF). 1997, c. 18, §2 (AMD). 1997, c. 18, §6 (AFF). 2001, c. 163, §1 (RPR). 2001, c. 667, §A41 (AMD). 2003, c. 538, §1 (AMD). 2005, c. 654, §3 (AMD).

Part 8: PROBATE AND TRUST LAW ADVISORY COMMISSION

§1-801. COMMISSION ESTABLISHED

The Probate and Trust Law Advisory Commission, established in Title 5, section 12004-I, subsection 73-B and referred to in this Part as "the commission," is created for the purpose of conducting a continuing study of the probate and trust laws of the State. [2009, c. 262, §2 (NEW) .]

1. Membership. The commission is composed of 10 members who have experience in practicing probate and trust law or are knowledgeable about probate and trust law. The membership of the commission must include:

A. Two Probate Court Judges, appointed by the Chief Justice of the Supreme Judicial Court; [2009, c. 262, §2 (NEW) .]

B. One Superior Court Justice, appointed by the Chief Justice of the Supreme Judicial Court; [2009, c. 262, §2 (NEW) .]

C. Five members of the trusts and estates law section of the Maine State Bar Association, appointed by the Chief Justice of the Supreme Judicial Court; [2009, c. 262, §2 (NEW) .]

D. One member representing the interests of older people, appointed by the Governor; and [2009, c. 262, §2 (NEW) .]

E. The Attorney General, or the Attorney General's designee. [2009, c. 262, §2 (NEW) .]

[2009, c. 262, §2 (NEW) .]

2. Terms. A member is appointed for a term of 3 years and may be reappointed.

[2009, c. 262, §2 (NEW) .]

3. Vacancies. In the event of the death or resignation of a member, the appointing authority under subsection 1 shall appoint a qualified person for the remainder of the term.

[2009, c. 262, §2 (NEW) .]

SECTION HISTORY

2009, c. 262, §2 (NEW).

§1-802. CONSULTANTS; EXPERTS

Whenever it considers appropriate, the commission shall seek the advice of consultants or experts, including representatives of the legislative and executive branches, in fields related to the commission's duties. [2009, c. 262, §2 (NEW).]

SECTION HISTORY

2009, c. 262, §2 (NEW).

§1-803. DUTIES

1. Examine, evaluate and recommend. The commission shall:

A. Examine this Title and Title 18-B and draft amendments that the commission considers advisable; [2009, c. 262, §2 (NEW).]

B. Evaluate the operation of this Title and Title 18-B and recommend amendments based on the evaluation; [2009, c. 262, §2 (NEW).]

C. Examine current laws pertaining to probate and trust laws and recommend changes based on the examination; and [2009, c. 262, §2 (NEW).]

D. Examine any other aspects of the State's probate and trust laws, including substantive, procedural and administrative matters, that the commission considers relevant. [2009, c. 262, §2 (NEW).]

[2009, c. 262, §2 (NEW) .]

2. Propose changes. The commission may propose to the Legislature, at the start of each session, changes in the probate and trust laws and in related provisions that the commission considers appropriate.

[2009, c. 262, §2 (NEW) .]

SECTION HISTORY

2009, c. 262, §2 (NEW).

§1-804. ORGANIZATION

The Chief Justice of the Supreme Judicial Court shall notify all members of the commission of the time and place of the first meeting of the commission. At that time the commission shall organize, elect a chair, vice-chair and secretary-treasurer from its membership and adopt rules governing the administration of the commission and its affairs. The commission shall maintain financial records as required by the State Auditor. [2009, c. 262, §2 (NEW).]

SECTION HISTORY

2009, c. 262, §2 (NEW).

§1-805. FEDERAL FUNDS

The commission may accept federal funds on behalf of the State. [2009 , c . 262 , §2 (NEW) .]

SECTION HISTORY

2009 , c . 262 , §2 (NEW) .

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